

REMARKS

The claims appearing in this application are 17-19. Claims 17-19 have been rejected under 35 U.S.C. Section 112 as containing subject matter not described in the specification in such a way to reasonably convey to one skilled in the relevant art that the inventor at the time the application was filed had possession of the claimed invention. The specification was also objected to on the grounds that new matter has been introduced.

Applicant has amended the specification at various portions throughout to correct grammatical and typographical errors and has amended the claims to overcome the objections and rejections set forth in the Office Action. Applicant therefore respectfully requests reconsideration of the claims as presently amended and the issuance of a Notice of Allowance with respect thereto.

DETAILED RESPONSE**NEW MATTER**

The Examiner has objected to the amendment filed on March 5, 2003 under 35 U.S.C. § 132 on the grounds that it introduced new matter into the disclosure in that the term “pivot about the point of connection” was added to the paragraph beginning at page 8, line 23, and that the limitation “member pivotally affixed to said cap” was added to claim 18. The Examiner has required Applicant to cancel the new matter in reply to the Office Action. Applicant respectfully traverses this requirement.

Where there has been a disclosure in a patent application of a device that inherently performs a function or has a property or operates according to a theory the patent application necessarily discloses that function, theory or advantage even though it says nothing explicit concerning it. The application may later be amended to recite the function, theory or advantage without introducing prohibited new matter. *In re Reynolds* 443 F2d 384, 170 USPQ 94 (CCPA, 1971); *In re Smythe* 480 F2d 1376, 178 USPQ 279 (CCPA, 1973).

By reference to Figures 1 and 6 of the specification, there is clearly disclosed a protective cover or cap 26 which fits over the valve 4 to protect it. It is clearly stated in the application as originally filed that “when the upper surface of the protective cover 136 is

depressed downwardly, it will contact the button or plunger 126 activating the valve 125 to release the refrigerant contained within the heat exchange unit 122". As is illustrated in Figures 1 and 6, the protective cover 136 is secured at the upper right hand portion of the cover to the body of the cover but is not secured at the upper left hand portion. Thus, when the upper surface of the protective cover 136 is pressed downwardly to contact the button or plunger 126, such can only be accomplish if the protective cover 136 pivots about the portion shown in the upper right hand portion of the cover as illustrated in Figures 1 and 6. This theory of operation and function, it is respectfully submitted, is inherent from the disclosure contained in Figures 1 and 6 of the specification. Therefore to add the descriptive material "pivot about the point of connection and" as was done in the previous amendment merely clarifies the inherent function and operation of the protective cover to allow it to activate the heat exchange unit and cool the beverage contained within the container. Applicant respectfully submits that the addition of the terminology "pivot about the point of connection" is not new matter and is therefore appropriate and further that the limitation added to claim 18 of the "member pivotally affixed to said cap" is proper. Applicant therefore respectfully requests reconsideration of the requirement to cancel the added material in the disclosure and to withdraw the same.

CLAIM OBJECTIONS

Claim 17 was objected to because of formalities pointed out in paragraph 4 of the Office Action. Claim 17 has been amended to correct those formalities and thus is respectfully submitted that the claim objections are no longer pertinent.

CLAIM REJECTIONS – 35 U.S.C. § 112

Claims 17-19 were rejected under 35 U.S.C. § 112 on the grounds that one skilled in the art would not be capable of making or using the invention and further that it was not reasonably conveyed to one skilled in the art that the inventor at the time the application was filed had possession of the claimed invention. The Examiner then, in the second part of paragraph 6, recited various specifics in support of that rejection. Applicant has amended claim 17 to specifically deal with this rejection. The amendment to claim 17 now specifically recites that the container of the invention includes (1) An outer vessel for containing a beverage and having a top and a bottom, the bottom defines an opening therethrough and a

flange having first and second sides formed of material of the bottom surrounding the opening and extending away from the bottom and into the container, (2) An inner unitary vessel having an upper open end and a closed bottom, (3) A valve cup carrying a valve and having a wall disposed adjacent the first side of the flange and the upper open end of the inner vessel disposed adjacent the second side of the flange, (4) An elastomeric seal is disposed between the flange and the upper open end of the inner vessel and between the flange and the valve cup, (5) Means for nonremovably affixing the inner vessel to the flange including crimping those adjacent portions of the valve cup, the heat exchange unit and the flange, (6) Adsorbent material substantially filling the inner vessel, and (7) Carbon dioxide gas under pressure adsorbed on the adsorbent material. It is respectfully submitted that these amendments to claim 17 overcome the rejections under 35 U.S.C. § 112 as pointed out by the Examiner.

The Examiner has questioned how an elastomeric seal could be both between the flange and the upper open end of the inner vessel and also between the flange and the valve cup. Applicant respectfully calls the Examiner's attention to page 5 beginning at line 7, where it is stated "an elastomeric material such as a washer 30 is positioned between the flange 28 and the inner surface 32 of the cap 18 of the heat exchange unit to provide an effective seal therebetween. A similar elastomeric material is coated on the exterior surface of the valve cup 22 and thus also provides a seal between the valve cup 22 and beverage can 14". It is respectfully submitted that this recitation in the disclosure clearly illustrates how the elastomeric seal can be both between the flange and the inner vessel and between the flange and the valve cup as claimed.

The Examiner also states that the "inner unitary vessel" 20 is in contact with the cap 18 when assembled as shown in Figure 6. Applicant respectfully submits that the Examiner is mischaracterizing Applicant's disclosure. As is clearly stated on page 4 beginning at line 12 "A heat exchange unit (HEU) comprises a vessel 16 having a lid 18 which will be affixed to the vessel 16 by crimping, welding, adhesives or the like. The HEU may be a single piece structure with the top necked in for attachment." Thus, it is clear that the inner unitary vessel 20 as shown in Figure 6 includes the cap 18 which is secured to the upper end thereof by crimping, welding, adhesives or the like or alternatively, includes such an inner vessel which does not have a cap 18 but rather is necked in to accommodate the attachment as above described.

Application No.: 09/721,058


Docket No.: LA-6185-221D1XX.US

Applicant respectfully submits that in view of the foregoing amendments and these remarks, that claims 17, 18 and 19 are now in condition for allowance and Applicant respectfully requests reconsideration thereof and the issuance of a Notice of Allowance with respect thereto.

A Petition for a Three Month Extension of Time is included herewith. If any additional fees or credits are due, please charge our Deposit Account No. 50-0337, under Order No. LA-6185-221D1XX.US from which the undersigned is authorized to draw.

Dated: October 1, 2003

Respectfully submitted,

By 

Billy A. Robbins

Registration No.: 18,313

FULBRIGHT & JAWORSKI L.L.P.

865 South Figueroa

Twenty-Ninth Floor

Los Angeles, California 90017-2571

(213) 892-9200 (Telephone)

(213) 680-4518 (Fax)

Attorney for Applicant